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No. 73-1842

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

GEORGE T. ADAMS,
Petitioner,

vs.

SOUTHERN CALIFORNIA FIRST NATIONAL BANK,
Respondent.

WILLIE O. HAMPTON AND MATTIE HAMPTON, Individually, and on behalf of all others similarly situated,
Petitioners,

vs.

THE BANK OF CALIFORNIA, National Association, A California banking corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, Southern California First National Bank, respectfully prays that the petition of George T. Adams for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit be denied.

OPINIONS BELOW

The opinion of the District Court is set forth in Appendix C of the Petition and is reported as *Adams* v. *Egley, et al.* at 338 F. Supp. 614. The opinion of the Court of Appeals for the Ninth Circuit, the dissenting opinion of Bryne, J., the order of the Court of Appeals denying *en banc* consideration and the dissenting opinion of Hufstedler, J. are set forth in Appendix B of the Petition and are reported at 492 F.2d 324.

JURISDICTION

The jurisdictional requisites for review in this Court are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether, in light of the existence of California Commercial Code §§ 9503 and 9504, the peaceful, private repossession (through a private repossessor licensed by the State) and sale of collateral by a private secured lender, after default and pursuant to a private security agreement, is action taken "under color of" state law within the scope of 42 U.S.C. § 1983, for purposes of stating a federal claim under 28 U.S.C. §§ 1331 or 1343;

2. In the event that a federal claim is stated, whether the facts of this case present an issue as to the constitutionality of California Commercial Code § 9504; and,

3. In the event that a federal claim is stated, whether California Commercial Code §§ 9503 or 9504 are violative of the due process clause of the Fourteenth Amendment to the Constitution and, if so, to what extent.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent provisions of the Fourteenth Amendment to the United States Constitution and certain federal and state statutes are set forth in the Petition at Appendix F. Additionally, Appendix A of this Brief sets forth the provisions of 28 U.S.C. §§ 1331 and 1343.

STATEMENT OF THE CASE

On June 17, 1968, Petitioner George T. Adams borrowed $1,000.00 from the Bank of La Jolla (predecessor in interest to Respondent Southern California First National Bank). In return, Adams executed an installment note promising repayment of $48.44 per month, for a total of $1,160.16, and also executed a security agreement granting to the bank a security interest in three motor vehicles. The security agreement provides, *inter alia,* that upon default the bank shall have all of the rights and remedies of a secured party under the California Commercial Code, "or any other applicable law," and further expressly provided that upon default the bank is entitled to take possession of the vehicles. [Pet. App. 3-4.]

By January, 1970, Adams had repaid nearly $900.00 of the loan, but he then became unemployed, and no further payments were made until July 7, 1970. Between July 25 and August 17, 1970, Adams and representatives of the bank discussed his loan which then had an outstanding balance of $217.45.

On August 19, 1970, the bank, acting through Richard Egley, a repossessor licensed by the State of California, took possession of two of Adams' three vehicles covered by the security agreement. Certain miscellaneous items of personal property not cov-

ered by the security agreement were contained within the vehicles at the time of their repossession. These items of personal property were returned to Adams some six weeks later. [Pet. App. 4-5.]

The two vehicles were sold by the bank. After deducting the cost of repossessing and storing the vehicles, the net proceeds amounted to $219.15. This recovery applied against the balance due resulted in a deficiency of less than $1.00 which was cancelled. [Pet. App. 5.]

On October 23, 1970, Adams filed suit in the Southern District of California seeking damages under 42 U.S.C. § 1983 and declaratory relief under 28 U.S.C. §§ 2201 and 2202. The District Court granted Adams' motion for partial summary judgment. In so doing, the District Court found that the enactment of Commercial Code §§ 9503 and 9504 constituted sufficient involvement of the State of California to support a finding of action taken "under color of" state law so as to confer federal jurisdiction and held that Commercial Code §§ 9503 and 9504 were invalid on their face as violative of due process requirements because they failed to provide notice and opportunity for hearing to the debtor prior to repossession as the District Court believed to be required by *Sniadach* v. *Family Finance Corp.* [395 U.S. 337 (1969); Pet. App. 40.]

The bank's petition for an interlocutory appeal under 28 U.S.C. § 1292(b) was granted, and the case was consolidated on appeal with the *Hampton* case. On October 4, 1973, the Court of Appeals issued its opinion reversing the District Court decision in *Adams,* Byrne, J., dissenting. After measuring *Adams* against the facts and tests enunciated in the major Supreme Court cases dealing with state action, the Court of Appeals concluded that the

State of California was "not so significantly involved" in self-help repossession as to permit the crucial conclusion for purposes of 42 U.S.C. § 1983 that the conduct of the bank was action taken under color of state law. A petition for rehearing with suggestion for rehearing *en banc* was timely filed and denied on March 12, 1972, Hufstedler, J., dissenting. [Pet. App. A.]

ARGUMENT

I

REVIEW BY THIS COURT IS UNNECESSARY BECAUSE ITS FAMILIAR STATE ACTION HOLDINGS ARE BEING CORRECTLY AND UNIFORMLY APPLIED BY THE COURTS OF APPEALS

Since adoption of the Fourteenth Amendment and the Civil Rights Statutes, this Court has frequently been called upon to decide under what circumstances the extraordinary limitations upon governmental power found in the Constitution and federal statutes apply to private conduct. Many of the cases decided by the Court during this time, especially those involving racial discrimination, exhibit the considerable ingenuity employed to disguise activities of the State and thereby escape Constitutional strictures. These cases have produced a vast and familiar literature devoted to the distinction between private conduct and action of the State. They have required the Court to explore such diverse topics as: the authority of regular and special police officers;[1] the participation by private organizations in elections;[2] probate

[1] *Monroe* v. *Pape*, 365 U.S. 167 (1961); *Williams* v. *United States*, 341 U.S. 97 (1951).

[2] *Smith* v. *Allwright*, 321 U.S. 649 (1944).

law;[3] leases of public property;[4] regulation of private clubs;[5] state sanitary regulations;[6] trespass statutes;[7] public utility services;[8] and "company towns".[9]

In view of the variety of state action problems which have been decided by this Court, it would require a most unusual and difficult case to present a need for further guidance. This is not such a case. With few exceptions, the many courts which have considered private nonjudicial repossession have applied existing Supreme Court decisions and found insufficient state involvement to support a federal claim. Appendix G to the Petition cites 34 lower court cases involving state action in the context of private nonjudicial repossession. Of these cases, only four trial court decisions have found sufficient state action to support a federal claim, while the other 30 decisions have found no state action. In addition to the instant cases in which the Court of Appeals for the Ninth Circuit has found a lack of state action, three other Courts of Appeals have arrived at the same conclusion. [*Nowlin* v. *Professional Auto Sales, et al.*, ...F.2d ..... (8th Cir., April 25, 1974, Nos. 73-1348, 73-1450), 4 CCH Secured Transactions Guide ¶52,351; *Nichols* v. *Tower Grove Bank*, ... F.2d ..... (8th Cir., May 13, 1974, No. 73-1621), 4 CCH Secured Transactions Guide ¶52,355; *Shirley* v. *State National Bank of Connecticut*, 493 F.2d 739 (2nd Cir. 1974), pet. for rehearing denied (March 29, 1974),

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[3] *Evans* v. *Abney*, 396 U.S. 435 (1970).

[4] *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

[5] *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).

[6] *Robinson* v. *Florida*, 378 U.S. 153 (1964).

[7] *Adickes* v. *Kress & Co.*, 398 U.S. 144 (1970).

[8] *Public Utilities Comm'n* v. *Pollak*, 343 U.S. 451 (1952).

[9] *Marsh* v. *Alabama*, 326 U.S. 501 (1946).

..... F.2d .....; and *James* v. *Pinnix*, ... F.2d ..... (5th Cir., June 10, 1974, No. 73-1866).] The same conclusion was also reached by the Supreme Courts of Oregon and Florida [*Brown* v. *United States National Bank*, 96 Ore. Adv. Sheets 1667, 509 P.2d 442 (1973); *Northside Motors, Inc.* v. *Brinkley*, 282 So.2d 617 (Fla. Sup.Ct. 1973).][10]

The near unanimity of result in the Courts of Appeals and other courts indicates that there is little need for further Supreme Court guidance in this area.[11]

II

THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

Petitioner declares that the decision of the Court of Appeals is in conflict with applicable decisions of this Court. To the contrary, however, analysis of the decisions cited by Petitioner and the facts underlying those decisions reveals that there is no such

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[10] Appellate courts have found no state action in cases dealing with other non-judicial creditor remedies. [*Kruger* v. *Wells Fargo Bank*, 11 Cal.3d 352 (1974), banker's common law and statutory right of offset; *Fletcher* v. *Rhode Island Hospital Trust State Bank*, ... F.2d ..... (1st Cir. No. 73-1372 May 9, 1974), banker's common law right of offset; *Bichel Optical Laboratories* v. *Marquette National Bank*, 487 F.2d 906 (8th Cir. 1973), bank's seizure of accounts receivable permitted by UCC section 9-502(1).]

[11] Any need for further guidance by this Court may also be eliminated by a case currently pending on its docket. *Jackson* v. *Metropolitan Edison Company* [483 F.2d 754 (3rd Cir. 1973), *cert. granted*, ... U.S. ....., 94 S.Ct. 1407 (1974)] where a private utility company terminated electrical service to a customer for non-payment. Given the close and formalized relationship between a state and a utility, if the Court fails to find state action in *Jackson*, it is most unlikely to find that due process proscriptions will apply to private parties who contract in a manner permitted, but not required, under state law.

conflict and that the Ninth Circuit opinion is in full accord with the teaching of this Court on the subject of state action.

In one line of decisions this Court dealt with misuse of power possessed by virtue of state law and made possible only because the individual involved was clothed with the authority of state law. [*Monroe* v. *Pape*, 365 U.S. 167 (1969); *United States* v. *Guest*, 383 U.S. 745 (1966); *Griffin* v. *Maryland*, 378 U.S. 130 (1964); *United States* v. *Classic*, 313 U.S. 299 (1941); *Screws* v. *United States*, 325 U.S. 91 (1945); *Williams* v. *United States*, 341 U.S. 97 (1959).] In each of these cases the wrongdoers were either state officials themselves, or were private persons who were *directly* and *affirmatively* assisted by state officials *at the time* the deprivation of constitutional rights occurred.

In this case, the State provided no such assistance to either Egley or the bank. Neither Egley nor the bank manifested any state authority to Adams in order to accomplish the repossession nor does Adams claim to have submitted to such a manifestation. Further, state law did not clothe Egley or the bank with authority to accomplish the repossession. Rather, the source of the authority was the security agreement between the parties. The enactment of §§9503 and 9504 offered no assistance to either Egley or the bank in that the right of a secured creditor to repossess and sell personal property without judicial process had been firmly stitched into the common law of California for many years prior to the enactment of §§9503 and 9504.[12]

In another line of decisions, this Court dealt with situations where private racial discrimination was *compelled* by the State.

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[12] See *Dohrman* v. *Durston*, 90 Cal.App.2d 236 (1949); *Crosswhite* v. *American Insurance Co.*, 61 Cal.2d 300 (1964); *Liver* v. *Mills*, 155 Cal. 459 (1909); and *Silverstin* v. *Kohler & Chase*, 181 Cal. 51 (1919). For statutory authority, see Former California Civil Code §§3016.2(2), 3016.2(3)(b) and 3031.

[*Peterson* v. *City of Greenville,* 373 U.S. 244 (1963); *Robinson* v. *Florida,* 378 U.S. 153 (1964); *Shelley* v. *Kraemer,* 334 U.S. 1 (1948); *Adickes* v. *Kress & Co.,* 398 U.S. 144 (1970); *Moose Lodge No. 107* v. *Irvis,* 407 U.S. 163, 178-179 (1972).]

In this case there is nothing contained in §§9503 and 9504 or in any related statute or regulation which in any way compelled or commanded either Egley or the bank to take possession of or sell the vehicles. Sections 9503 and 9504 are completely permissive with respect to whether the creditor will repossess.

In yet another line of decisions, this Court dealt with situations where the State had abdicated to private individuals a function of the State which the State was *historically required to perform.* [*Smith* v. *Allwright,* 321 U.S. 649 (1944); *Terry* v. *Adams,* 345 U.S. 461 (1953); *Marsh* v. *Alabama,* 326 U.S. 501 (1946); *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.,* 391 U.S. 308 (1968). Cf. *Lloyd Corporation Ltd.* v. *Tanner,* 407 U.S. 551 (1972).]

Extrajudicial repossession of collateral has *never been* a function of the State nor one which the State is historically required to perform.[13] Accordingly the State, in this case, has abdicated nothing to either Egley or the bank.

Finally, in other decisions, this Court dealt with diverse situations where the State had become involved with private conduct to an "unconstitutional degree". [*Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961); *Evans* v. *Newton,* 382 U.S. 296 (1966); *Reitman* v. *Mulkey,* 387 U.S. 369 (1967). Cf. *Moose Lodge No. 107* v. *Irvis,* 407 U.S. 163 (1972).]

In *Burton* v. *Wilmington Parking Authority, supra,* a virtual

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[13] See n. 12, *supra.* See also Burke & Reber, State Action, Congressional Power and Creditors' Rights: An Essay On The Fourteenth Amendment, 46 So.Cal.L.Rev. 1003 (1973).

partnership for profit existed between the State and a private restaurant which engaged in racial discrimination on premises leased from the State. The State received substantial annual rental from the restaurant and was responsible for the upkeep of the leased premises. In this case, the State had no economic interest in any part of the transaction between Adams and the bank and, accordingly, no particular interest in whether the repossession occurred.[14] Further, the repossession was accomplished without the use of state officials or property so that no state "prestige" was employed.

In *Evans* v. *Newton, supra,* the Court found that a park willed in trust for use by Caucasians only was in effect a public facility because the City of Macon had for many years physically managed and maintained the park. By contrast, the conduct of the bank in this case was not part of any state activity, and the State in no way participated in the decision to repossess. Neither had the State managed or maintained the bank or its property or rendered any physical assistance in repossession.

Reitman v. *Mulkey, supra,* was heavily relied upon by both the District Court in its opinion and by Petitioners when the case was before the Court of Appeal. In *Reitman,* the State of California had adopted a constitutional amendment which repealed legislation prohibiting discrimination in housing on account of race. The amendment also effectively prevented future legislation which would prohibit racial discrimination in housing. This Court affirmed the determination of the California Supreme Court that

[14] The observation that the State has an economic interest in the automobile industry and its secured credit industry is an empty generalization which is valueless in making state action decisions. [Pet. 14; Pet. App. 37-38.] If the State's economic interest in its industries were a criterion for determining state action, one could plausibly argue that any contract between private parties in any significant industry would be subjected to Constitutional scrutiny as though the State were a party.

the constitutional amendment would involve the State in private racial discrimination to "an unconstitutional degree".[15]

In *Reitman,* this Court noted with apparent approval the conclusion of the California Supreme Court that the State was permitted a neutral position relative to private racial discrimination and that the State was not required to have legislation prohibiting it. Measuring the facts in *Adams* by the tests in *Reitman,* it is apparent that at most the State, in enacting §§9503 and 9504, took the neutral position permitted to a state under the analysis of *Reitman.*

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[15] This Court also approved the analysis of the California Supreme Court, which examined the constitutionality of the amendment in terms of its "immediate objective," its "ultimate effect" and its "historical context and the conditions existing prior to its enactment." [387 U.S. at 373.]

The California Supreme Court found that prior to the enactment of the constitutional amendment the State of California had passed several acts regulating and prohibiting racial discrimination in the sale or rental of residential housing. The amendment was intended to, and did, establish a purported constitutional right to privately discriminate "on grounds which admittedly would be unavailable under the Fourteenth Amendment *should State action* be involved." [387 U.S. at 374.] The California Supreme Court also assessed the ultimate impact of the amendment and concluded that its enactment would "encourage and significantly involve the State" in private racial discrimination contrary to the Fourteenth Amendment.

It has been noted, *supra,* that prior to the enactment of §§9503 and 9504, a secured creditor had the right to repossess and sell personal property without judicial process under the common and statutory law of California. [See n. 12 *supra.*] Thus, no immediate or long-term objective to deprive debtors of procedural due process can reasonably be attributed to the enactors of §§9503 and 9504.

Because the enactment of §§9503 and 9504 created no rights in the secured party which did not exist under prior California law, the impact of §§9503 and 9504 in California was the creation of a mere compendium of the rights and duties of secured creditors and debtors with respect to repossession and sale of collateral. If any state policy was set forth by the enactment of §§9503 and 9504, it is that the people of California would derive benefit from a simplified compendium of California law on repossession and sale of collateral which would be uniform with other states.

Although the California Supreme Court has not considered the impact of §§9503 and 9504 in the California environment, its recent decision in

(This footnote is continued on next page)

In *Moose Lodge No. 107* v. *Irvis, supra,* this Court rejected the argument that pervasive and detailed state regulation of the operations of a private club holding a liquor license was sufficient to find that racial discrimination by the club was state action. Similarly, the statutes relied upon by Petitioner to illustrate "pervasive state regulation" furnish no basis for charging the State with the conduct of the bank because they regulate peripheral details of repossession and do not approve, compel, facilitate or encourage repossession.[16]

III

REVIEW OF NONJUDICIAL REPOSSESSION WOULD BE PREMATURE

Assuming that this Court were to accept the *Adams* case for review and determine that there was sufficient state involvement to support a claim under 42 U.S.C. §1983, the Court would be

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Kruger v. *Wells Fargo Bank* [11 Cal.3d 352 (1974)] is instructive in its analysis of the nonjudicial remedy of the banker's right of setoff. That remedy had been partially codified in Code of Civil Procedure §440.

Comparing § 440 with the constitutional amendment in *Reitman,* the court noted:

"Former §440, on the other hand, took a neutral stance. Recognizing the established principle of equity that either party to a transaction involving mutual debts and credits can strike a balance, holding himself owing or entitled only to the net difference, the statute merely establishes a procedure for asserting such a setoff under the code pleading system of California. Since it does not alter the substantive law of setoff, we see no basis for finding that §440, or its successor §431.70, was intended to, or did, *encourage* banks or other creditors to exercise their right of setoff without notice to the debtor." [11 Cal.3d at 362].

The California Supreme Court also went on to note that insofar as the remedy derived from common law, judicial acceptance of common law remedies does not constitute State action. The analysis in *Kruger* compels the conclusion that the California Supreme Court would likewise conclude that enactment of §§9503 and 9504 did not involve the State in the conduct of the bank to an unconstitutional degree.

[16] California Commercial Code Sections 9503 and 9504 merely codified

(This footnote is continued on next page)

faced with deciding whether to consider if a substantive deprivation of due process had occurred.

The Court's most recent decision in the area of civil due process carefully noted several studies and draft legislation concerning summary creditor remedies. *Mitchell* v. *W. T. Grant Co.*, [..... U.S. ....., ..., n. 13, 42 U.S.L.W. 4671, 4677, n. 13 (1974).]

> "As revealed in the various studies and proposals, the principal question yet to be satisfactorily answered is the impact of prior notice and hearing on the price of credit, and more particularly, of the mix of procedural requirements necessary to minimize the cost. The commentators are in the throes of debate, see e.g., Symposium, Creditors Rights, 47 So.Calif.Law Rev. 1-164 (1973), and basic questions remain unanswered. See generally, Note, Self-Help Repossession; the Constitutional Attack, the Legislative Response and the Economic Implications, 62 Geo.L.J. 273 (1973).
>
> "We indicate no view whatsoever on the desirability of one

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existing commercial practices. [See n. 12 *supra*.] With the exception of §9504(3), there is no requirement that security agreements comply with those sections. To the extent that §9504 (and California Civil Code §2983.2) require notice to the debtor and sale "in a commercially reasonable manner," they only serve to restrict the creditor's remedy. Additionally, California Civil Code §2982(a)(10) merely requires that if the parties agree to a repossession provision they so state in their contract.

California Business and Professions Code §§7520 et seq. confer no right or power upon secured parties to repossess collateral but merely require that repossessors be licensed. The licensing of repossessors, together with provisions prescribing minimum standards of character, experience and conduct, also comprise restrictions upon the secured party, who prior to their enactment was presumably able to hire anyone he chose to perform repossession tasks.

California Vehicle Code §28, requiring that police be notified of a repossession, does not aid repossession but is a regulatory measure enacted by the State for its own benefit. The clear purpose of the statute is to protect the State from needless expenditure of time and funds in attempting to locate missing vehicles which had been rightfully repossessed.

Likewise, Vehicle Code §§ 5600, 5602, 5609 and 9561 provide no aid, comfort or incentive to secured parties. They simply provide a statutory scheme of registration after title has passed by operation of law.

Any statutory authorization for deficiency judgments has no application to either *Adams* or *Hampton*. In neither case did the banks seek a judgment of any type against the Petitioners.

> or more of the proposed reforms. The uncertainty evident in the current debate suggests caution in the adoption of an inflexible constitutional rule. Our holding in this case is limited to the constitutionality of Louisiana sequestration procedures."[17]

The Court in *Mitchell* made clear that notice and opportunity for hearing are not in every case the indispensible safeguards required to assure due process. If the Court proceeds to consider this case, it will do so prior to receiving the benefit of the research and debate now under way.

Further, there are a number of shortcomings in the present posture of this case which would preclude effective review on the merits by this Court.

First, the decision of the Court of Appeals did not reach the substantive due process issue because it decided there was insufficient state involvement to support a federal claim under 42 U.S.C. §1983. The District Court opinion did address substantive due process, but the deficiency relied upon was the failure to afford notice and opportunity for hearing prior to repossession under the authority of *Sniadach* v. *Family Finance Corp., supra.* The opinion in *Mitchell* now makes it clear that notice and opportunity for hearing is not a *sine qua non* of substantive due process. That decision declares that resolution of the due process problem "must take account not only of the interests of the buyer of the property but those of the seller as well". [..... U.S. at ....., 42 U.S.L.W. at 4673.]. Because the *Mitchell* case was very recently decided, the lower courts had no opportunity to consider its impact.

Petitioner in the District Court and in the Court of Appeals

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[17] Mr. Justice White, author of the majority opinion in *Mitchell,* articulated a similar respect for the study and judgment of those who "have wrestled with these problems so long and often" in his dissent in *Fuentes* v. *Shevin* [407 U.S. 67, 103 (1972).]

strenuously argued that the *only* way to assure due process was to provide prior notice and opportunity for hearing. Petitioner has with apparent ease shifted gears and now adopts *Mitchell* as the criterion for deprivation of substantive due process. The lower courts and the other parties to this appeal, however, have not had the benefit of a full exploration of substantive due process principles under the current law, and thus *Adams* lacks sturdy lower court underpinnings for a decision on substantive due process.

Additionally, the District court opinion was issued prior to the opinion of this Court in *Fuentes* v. *Shevin* [407 U.S. 67 (1972)], where, as in *Mitchell*, the only question considered was whether a violation of substantive due process occurred. The *Fuentes* decision emphasized that a significant element of deprivation of due process there was the fact that the State through its officers intervened on the side of one party to a private dispute. The officers were empowered to use force if necessary to seize the goods. By invoking state power, as in *Fuentes*, the creditor is in an immensely more powerful position relative to the debtor, and the debtor has no choice but to surrender his property.

> "The replevin of chattels, as in the present cases, may satisfy a debt or settle the score. But state intervention in the private dispute hardly compares to state action furthering a war effort or protecting the public health." [407 U.S. at 92-93.]
>
> "The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark." [407 U.S. at 93.]

The instant action presents a wholly different situation in which the private parties to a dispute are not aided in any manner by the State. The principal statute under attack, California Commercial Code Section 9503, prescribes that nonjudicial repossession may only occur where there will be no breach of the peace. As a practical matter, this means that the debtor is on an even footing with his creditor. Most goods, such as the household articles discussed in *Fuentes*, are inside the debtor's home and thus immune from nonjudicial repossession. As to automobiles, the most common type of property subject to nonjudicial repossession, the debtors are free to conceal them from their creditors or lock them in their garages, thereby precluding nonjudicial repossession.

CONCLUSION

Petitioner's extravagant view of state action would place all individuals under the strictures of Due Process concepts for no more substantial reason than speculation about the interest of the State in its economic well-being. A causal connection between any act of the State and the repossession of automobiles by the bank is clearly lacking. All appellate courts which have considered the issue have rejected petitioner's position. No further instruction by this Court is needed. We respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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